IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 206 of 1994
And
CMP No. 598 of 2002

Date of decision 10.10.2006

Surinder Lal Sood and another **…Petitioners.**

Versus

Sadhu Ram and others **…Respondents.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the petitioners: Mr. K.D. Sood, Advocate.

For respondents : Mr. Bhupender Gupta, Sr. Advocate, with Mr. Neeraj Gupta, Advocate, for respondent No. 3.
None for other respondents.

Surjit Singh, Judge (Oral)

Revision petitioner Rainka Devi, now deceased and represented by her legal representatives, was the owner of certain premises. Those premises were let out to respondent No.1 on monthly rent of Rs.20/-. A petition, under Section 14 of the H.P. Urban Rent Control Act, was filed by the revision petitioner, hereafter called landlady, seeking ejectment of the tenant on the following grounds:-

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Whether reporters of Local Papers may be allowed to see the Judgment?

(a) The tenant was in arrears of rent since January, 1976;

(b) The tenant had sublet the premises to respondent No. 2, 3 and 4, without the consent of the landlady;

(c) The tenant had changed the user of the premises and the vacant site appurtenant thereto.

2. The tenant and respondents No. 2, 3 and 4 contested the petition. The Rent Controller returned the findings that the tenant was in arrears of rent, he had sublet the premises to respondents No. 2, 3 and 4, without the consent of the landlady and had also changed the user of the premises and the vacant land appurtenant thereto.

3. Appeal was filed before the Appellate Authority by the tenant and two of the alleged sub-tenants. The Appellate Authority accepted the appeal holding that the necessary ingredients of the grounds of subletting and change of the user had not been pleaded inasmuch as it was not stated that the subletting and the change of user had taken place after the commencement of the Act and hence the eviction on these two grounds could not have been ordered. Dealing with the ground relating to arrears of rent, the appellate authority held that the 'amount due', having been deposited by the tenant after the passing of the order by the Rent Controller, the tenant would not be ejected as a result of the order passed by the Rent Controller, on the ground of non-payment of rent.

4. The revision petitioner has alleged that even though the necessary ingredients of the grounds of subletting and change of user had not been pleaded, evidence with regard to the missing ingredients of the aforesaid two grounds had been adduced and, therefore, the Appellate Authority was not right in setting aside the order of ejectment passed by the

Rent Controller on the aforesaid two grounds. It is also the contention of the revision petitioner that the Appellate Authority ought not have passed any order or made the observation that the 'amount due' having been paid, the tenant will not be ejected by executing the order of eviction passed on the ground of non-payment of rent. It is alleged that it was for the Rent Controller to decide whether the amount, deposited by the tenant after the passing of the impugned order, was equal to the 'amount due' within the meaning of proviso third to clause (i) of sub-section (2) of Section 14 of the H.P. Urban Rent Control Act, 1987 or was short of that amount.

5. An application, under Order 6 Rule 17 of the Code of Civil Procedure (CMP No. 598 of 2002) has also been moved by the revision petitioner seeking the leave to amend the petition so as to plead those ingredient pertaining to the grounds of subletting and change of user, which are missing. The missing ingredient, in respect of both the grounds, is that the subletting and change of the user had taken place after the commencement of the H.P. Urban Rent Control Act.

6. First I will take up the application, moved by the revision petitioner for the amendment of the petition. Scope of revisional jurisdiction of the High Court in the matters under the H.P. Urban Rent Control Act, 1987 is laid down in sub-section (5) of Section 24 of the Act, which is reproduced below:-

> "**Sec. 24 (1) to (4) xxxxx xxxxx**
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> **(5)** The High Court may, at any time, on the application of any aggrieved party or on its own motion call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings

and may pass such order in relation there to as it may deem fit."

7. From a bare reading of the aforesaid provision it is clear that the High Court has the jurisdiction to pass an order in relation to the legality or propriety of any order passed or proceedings taken under the Act. It cannot reopen the matter by allowing amendments in the pleadings of the parties or permitting additional evidence to be led, unless such a prayer made by either of the parties before the Appellate Authority or the Rent Controller had been rejected and the order rejecting such a prayer is found to be illegal or improper.

8. For the foregoing reasons, the prayer for amendment of the eviction petition is rejected.

9. Admittedly the revision petitioner did not plead that the alleged subletting and change of user had taken place after the commencement of the H.P. Urban Rent Control Act. Eviction on the grounds of subletting and change of user can be sought only if the alleged subletting and change of user have taken place after the commencement of the Act, per sub-clauses (a) and (b) of clause (ii) of sub-Section (2) of Section 14 of the H.P. Urban Rent Control Act, 1987. The revision petitioner having not pleaded that the alleged subletting and change of user had taken place after the commencement of the Act, no fault can be found with the findings of the Appellate Authority that the necessary ingredients of these grounds having not been pleaded, the Rent Controller was not justified in ordering the eviction of the tenant on these two grounds. Therefore, the revision petition, so far as it assails the order of the appellate authority setting aside

the order of ejectment passed by the Rent Controller on the grounds of subletting and change of user, is dismissed.

10. As regards the findings / observations of the Appellate Authority that the 'amount due' having been deposited, the tenant shall not be ejected pursuant to the order of ejectment (on the ground of non-payment of rent as passed by the Rent Controller), suffice it to say that it was not within the domain of the Appellate Authority to have adjudged, while deciding the appeal against the order of ejectment, whether the amount that had been deposited was equal to the 'amount due' required to be deposited or whether it was short. Only the Rent Controller, on being approached by the landlady, had the jurisdiction to determine such a question. The order / observation of the appellate authority to this extent, being without jurisdiction, is set aside and the revision petition, only to this limited extent, is allowed.

October 10, 2006 (BC) **(Surjit Singh)**
Judge